

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

3 WESTERN DIVISION

4 - - -

5 UNITED STATES OF AMERICA, :

6 Plaintiff, : CRIMINAL NO. 1:05-CR-37

7 -vs- : Sentencing

8 J. PATRICK KISOR, : Thursday, August 25, 2005  
10:37 a.m.

9 Defendant. : Cincinnati, Ohio

10 - - -

11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE MICHAEL H. WATSON, JUDGE

13 - - -

14 For the Plaintiff: William E. Hunt, Esq.  
15 First Assistant United States Attorney  
221 East Fourth Street, Suite 400  
16 Cincinnati, Ohio 45202

17 For the Defendant: Glenn V. Whitaker, Esq.  
Vorys, Sater, Seymour and Pease  
18 Atrium Two, Suite 2000  
221 East Fourth Street  
19 Cincinnati, Ohio 45202

20  
21  
22 Court Reporter: Julie A. Wolfer, RDR, CRR

23 - - -  
24  
25

PROCEEDINGS

(In open court at 10:37 a.m.)

COURTROOM DEPUTY: The next matter on the docket is District Court Case Number 1:05CR37, U.S.A. versus J. Patrick Kisor.

THE COURT: Can I get a show of hands from the folks back there, are there victims of Mr. Kisor in the court?

Thank you, sir.

Anyone else?

Okay. You folks will get an opportunity to speak.

Gentlemen, if you'd come forward.

Mr. Kisor, you have a number of good friends.

THE DEFENDANT: Yes, I do.

THE COURT: Mr. Whitaker.

MR. WHITAKER: Yes, sir.

THE COURT: How are you?

MR. WHITAKER: Thank you. Good.

THE COURT: You understand that we don't have all of the restitution figures at this point, but Miss Jensen is working diligently to get them.

MR. WHITAKER: That's my understanding, Your Honor. Mr. Hunt and I spoke about it this morning, and we're prepared to proceed; and then, of course, the Court can modify the restitution order as it deems necessary.

THE COURT: Very well.

1           You've had an opportunity to review the presentence  
2   report?

3           MR. WHITAKER: I have, Your Honor.

4           THE COURT: And, Mr. Kisor, you have as well?

5           THE DEFENDANT: Yes, I have, Your Honor.

6           THE COURT: Have all of -- if there were objections,  
7   have they been resolved?

8           MR. WHITAKER: Yes, sir. There are no objections  
9   pending.

10          THE COURT: Very well.

11          Good morning, Mr. Hunt.

12          MR. HUNT: Good morning, Your Honor.

13          THE COURT: Mr. Whitaker, you want to go ahead and  
14   make a mitigation statement on behalf of your client?

15          MR. WHITAKER: Thank you, Your Honor.

16          Your Honor, the Court is aware that the Probation  
17   Department has recommended in this case that the Court find 29  
18   as the appropriate guideline level. That is different than  
19   what was contained in the plea agreement, but there has been no  
20   objection by either side with respect to the finding of the  
21   Probation Department.

22          If the Court chooses to strictly apply the guidelines,  
23   certainly we would ask the Court to sentence at the low end of  
24   the guideline range. Of course, the Court now, pursuant to the  
25   decisions from the Supreme Court, is free to impose any

1 sentence within the statute.

2 The Court has received numerous letters sent by  
3 friends and family in this case which I think tell a more  
4 complete story of Pat Kisor than the facts of the information  
5 in the plea.

6 Your Honor, Mr. Kisor, as is detailed in the  
7 presentence investigation report, is a man of humble origins  
8 who started an investment business that clearly went awry, in  
9 large part through his efforts but also in large part due to  
10 the situation of the market. Pat has proven over the years to  
11 be a generous and kindhearted man who has given countless hours  
12 of his time and money to charities, friends, church and  
13 community, and all of that, Your Honor, is attested to, I  
14 think, in detail in the letters that you have received. He is  
15 a very talented individual, an entrepreneur who we believe if  
16 given an opportunity can and will make good on his promise to  
17 repay every investor in this case.

18 Pat came to me, Your Honor, with his problems nearly  
19 three years ago, I guess, at this point. We discussed them,  
20 and he opted to meet with the United States Attorney's office  
21 and confess the investment losses and misuse of funds that  
22 became the subject of the plea. At the time that he came  
23 forward, there were some investigations going on with respect  
24 to Agave, but at least as far as Pat was concerned, he was  
25 unaware of any criminal investigation by the United States

1 Attorney. I'm not saying that there wasn't one, but as far as  
2 he was concerned, he was not aware of it.

3 We met on several occasions with the agents. Pat  
4 always took full responsibility for his actions. He never  
5 attempted to cast blame on others, although I think that would  
6 have been appropriate in some instances. And I can tell the  
7 Court that throughout my contact with him, his main concern in  
8 all his conversations has been his investors and getting them  
9 repaid.

10 As the Court can tell, and his family is here today,  
11 Pat is a family -- loving, caring, family man. He has five  
12 children. He has a very close family. He has literally, Your  
13 Honor, taken people into his home when they were in time of  
14 need. Just yesterday, one of his friends who is here today, a  
15 lady named Pamela Winther who has submitted a letter to the  
16 Court, sent me a letter documenting efforts that she has  
17 engaged in over the past couple weeks to find unpaid employment  
18 for Pat if the Court were to impose a sentence that would allow  
19 him to stay in the community and work for various agencies that  
20 would have unpaid employment for him. And there are some.  
21 There are some that are -- would be happy to have his expertise  
22 and abilities. And, again, of course, that is entirely up to  
23 the Court as to how the Court wishes to proceed.

24 I can tell you, Your Honor, that Pat Kisor is deeply  
25 sorry for his crimes. He's been extremely remorseful in all of

1 my dealings with him. He has had a gambling addiction and he  
2 has sought treatment for that and continues to receive  
3 treatment for it, and that, in part, led to some of the  
4 situations that we have.

5 The money loss --

6 THE COURT: How long has he had a gambling addiction?

7 MR. WHITAKER: How long, do you --

8 THE DEFENDANT: Probably since about 1990. That's  
9 when I started gambling. I didn't know -- I didn't recognize  
10 the addiction until later.

11 THE COURT: Thank you.

12 MR. WHITAKER: Your Honor, there clearly has been a  
13 number of diversions of funds. We've admitted to all of that.  
14 I know that the United States Attorney has prepared charts with  
15 respect to that. There's never been any dispute about it. The  
16 only dispute with respect to a portion of it which is about 3.6  
17 million of the 8 million dollars that's referred to in there is  
18 that a lot of that money went to others who were working with  
19 or associated with Mr. Kisor, but clearly it was his  
20 responsibility and he's admitted all of that and takes full  
21 responsibility for it.

22 Your Honor, the only thing I would say is that, again,  
23 if the Court follows the guidelines, we would ask for the low  
24 end of the guideline range as a sentence; but we would ask the  
25 Court to exercise its newly recognized discretion in this case

1 and impose a sentence that will allow Pat back into the work  
2 force as quickly as possible so that he can repay the  
3 investors. And I can assure the Court that is his intention  
4 and that is what he expects to do over the coming years.

5 THE COURT: Thank you.

6 Mr. Kisor, what do you have to say, sir?

7 THE DEFENDANT: I'm deeply sorry for the things that I  
8 did. I take full responsibility for my actions. I apologize  
9 to my investors, to the Court, to society at large, and to my  
10 family. And I will work the rest of my life to repay the money  
11 that has been taken and to try and rebuild the trust that I  
12 broke.

13 That's all.

14 THE COURT: Thank you.

15 Mr. Hunt.

16 MR. HUNT: Your Honor, thank you for the opportunity.

17 May I have a moment? I do have a chart I'd like to  
18 show to the Court.

19 THE COURT: Thank you.

20 MR. HUNT: While we're getting that, I would say for  
21 the record that I've shown this to Mr. Whitaker. He is aware  
22 of it. But I do want to take an opportunity to kind of  
23 emphasize to the Court the nature of this case.

24 While we are waiting for the chart, I would say that  
25 Mr. Kisor accepted money from a number of different victims, a

1 lot of whom were well-to-do, prominent members of the  
2 community, as the Court is aware of that. Here in court today  
3 is an attorney for one of the victims that I think might want  
4 to speak to you.

5 If you don't mind, Glenn, I'll just put that here. I  
6 think the Judge can see this where it is.

7 THE COURT: I can see it.

8 MR. HUNT: There is an attorney present, Jeffrey  
9 Bakst, who represents Dr. Errol Stern, a prominent surgeon here  
10 in town. He was one of the people that invested money. There  
11 are a lot of people like him that are well-off in the  
12 community. But I also wanted to tell the Court that one of the  
13 victims was a young man by the name of Nicholas Kroehner. He's  
14 on the list. He was in a motorcycle accident, Your Honor, and  
15 received a settlement, some \$200,000, which he invested with  
16 Mr. Kisor. That money is lost. Mr. Kroehner does not have the  
17 ability, like some of the other victims, to go out and make  
18 large amounts of additional money because he had to drop out of  
19 school, didn't have the ability to pay tuition, and is right  
20 now struggling. So there is a wide variety of people that were  
21 affected by this activity.

22 Now, Mr. Whitaker, and I understand his point of view,  
23 wants to cast this as investment losses. However, we're not  
24 here to talk about the money that was lost through bad  
25 investments. We're here to talk about the money that Mr. Kisor



1 stole and he used it for his own personal reasons, personal  
2 housing expenses, luxury vehicles, clothing, jewelry, gambling  
3 losses, vacations, et cetera. So while the people who invested  
4 the money could reasonably accept some risk from their  
5 investment, they certainly didn't contemplate that the person  
6 with whom they were investing would actually just take the  
7 money and use it for himself. As you can see from the chart  
8 the different categories that add up to over eight million  
9 dollars. Not bad investments but actual diversion from the  
10 investments.

11 Now, I know that the Court takes a lot of time and  
12 puts a lot of thought into an appropriate sentence in these  
13 cases. We understand that the guidelines offer a range. I  
14 know the Court has discretion. But I think the Court should  
15 seriously consider the guidelines because they do represent a  
16 lot of the factors that the Court should consider in  
17 determining what's appropriate in this case, not only from the  
18 standpoint of consistency throughout the country and the types  
19 of sentences that should be awarded but in deterrence and  
20 actual punishment for these crimes.

21 Mr. Kisor, while he, I'm sure, is sincere in his  
22 desire to pay back the money, he can't pay back the money.  
23 These people are out. And while there may be some compensation  
24 through a receiver and all of that, eventually it's still going  
25 to amount to just pennies on the dollar, Your Honor, and I'm

1 sure the Court is aware of that, Mr. Whitaker is; and as much  
2 as Mr. Kisor tries, it will take a long time for him to come up  
3 with the eight million dollars that represent the loss in this  
4 case. So I want the Court to take all of that into  
5 consideration in arriving at an appropriate sentence.

6 THE COURT: Mr. Hunt --

7 MR. HUNT: Yes, sir.

8 THE COURT: -- does he face additional issues with the  
9 IRS at this point?

10 MR. HUNT: One of the provisions of the plea agreement  
11 was for Mr. Kisor to file appropriate tax returns for the years  
12 in question within 120 days of his plea. That time has come  
13 and gone. We have checked. He has not filed. Mr. Whitaker  
14 tells me that he is in the process of getting that together and  
15 I believe that's true, but he has not yet made amends with the  
16 IRS. Whether there will be additional criminal charges, I  
17 doubt, but he will have some financial liability with them.

18 MR. WHITAKER: Your Honor, if I may speak to that.  
19 Part of the problem is is that Mr. Kisor's records weren't  
20 great to begin with and what he had is now in the possession of  
21 the government. And he's trying to reconstruct, and it's  
22 difficult because obviously he doesn't want to file something  
23 that's incorrect, and that is the problem in these kinds of  
24 cases. But he will continue to try to do that.

25 THE COURT: So a restitution figure, it seems to me

1 the restitution figure is in the six-million-dollar range here;  
2 correct?

3 MR. WHITAKER: It is, Your Honor, as contained in the  
4 PSIR.

5 THE COURT: On top of that, he's going to have  
6 probably significant additional tax liability; correct?

7 MR. WHITAKER: I believe so, Your Honor.

8 THE COURT: And penalty and interest.

9 Okay. Are there victims that would like to speak?

10 Sir, if you'd approach the podium, state your name for  
11 the record.

12 MR. BAKST: Good morning, Your Honor. My name is  
13 Jeffrey Bakst. I'm an attorney here representing one of the  
14 victims, Dr. Errol Stern, who is a active practicing orthopedic  
15 surgeon who has a full orthopedic schedule this morning or he  
16 would be here. And he just wanted me to come and let you know  
17 there's another side to this story.

18 We hear that this was investment losses, but from  
19 Dr. Stern this man took \$500,000, blatantly stole it. He just  
20 stole it. He never -- he didn't invest it. And we filed a  
21 civil suit, and when it wasn't stayed, it's stayed right now  
22 because of the SEC suit that's in a different court, but when  
23 it wasn't stayed, we didn't get, well, we'll consent to a  
24 judgment; they fought us. Dr. Stern's never heard an apology  
25 from this man. No remorse whatsoever from this man. And he

1 took a piece of Dr. Stern's retirement money, and he wants the  
2 Court to know that this man -- it wasn't a bad investment, it  
3 was a blatant theft, and we would ask for restitution, Your  
4 Honor.

5 THE COURT: Thank you.

6 MR. BAKST: That's all we have.

7 THE COURT: Thank you.

8 Anyone else?

9 Sir.

10 MR. DRABEK: Good morning. Good day. My name is  
11 Dennis Drabek.

12 I was not only an investor in Pat's organizations but  
13 at one point in time I was a confident, or I thought I was a  
14 confident. It's nice for him to have Mr. Whitaker as his  
15 counsel. The sale of a Rolls-Royce -- excuse me, I'm a little  
16 nervous -- the sale of a Hummer, investors' money to pay for  
17 his legal counsel. Eight million. It's in excess of sixteen  
18 million. That's in another court.

19 He's a thief. He uses his church to cover. I sat in  
20 meetings where he spoke of the Lord and setting up 150 million  
21 dollars. He had told everyone he had in excess of a hundred  
22 million dollars sitting inside an account. He used his church,  
23 he used his friends, his confidants. He's using his attorney  
24 to bamboozle this Court.

25 THE COURT: I don't feel bamboozled, but go ahead.

1 MR. DRABEK: But I'm listening to what's being  
2 presented quite eloquently by Mr. Whitaker, and it's so far  
3 from the truth. I think Mr. Kisor is a generous individual.  
4 It's easy to be generous with other people's money.

5 I feel bad for his wife and his family. I feel bad  
6 for the people that were kind enough to write letters on his  
7 behalf because they truly don't know him. He may have remorse  
8 now that he's going to prison.

9 Once he knew it was over, I believe it was a hundred  
10 thousand in one week. New Mini Cooper, a new B-Rod  
11 Harley-Davidson. Who knows how much cash was spent, the money  
12 wasted in Las Vegas. The moneys lost are far in excess of  
13 eight million dollars. There are other investors, they're too  
14 embarrassed to appear in this court. They're too embarrassed  
15 to stand at this podium. I wish I wasn't standing at this  
16 podium. But someone needs to speak other than the eloquent  
17 Mr. Whitaker.

18 THE COURT: I appreciate --

19 MR. DRABEK: I wish his family the best. Hopefully  
20 they do well. That's where the sorrow and pity needs to go. I  
21 just hope the Court sees justice in this.

22 Thank you.

23 THE COURT: Sir, your loss is what?

24 MR. DRABEK: I can't put a dollar amount on my loss at  
25 this point because I don't have all the records from the

1 government. I was being paid moneys, amount I can't put on it,  
2 but it's in excess of seven figures. More than seven figures.

3 Thank you, sir.

4 THE COURT: Thank you, sir.

5 Miss Jensen, are you working with Mr. Drabek?

6 PROBATION OFFICER JENSEN: I will be, yes.

7 THE COURT: Thank you.

8 Mr. Kisor, I have not accepted your plea yet. I want  
9 you to understand that if I impose a sentence that's greater  
10 than you anticipate, you can't withdraw your plea. Do you  
11 understand that?

12 THE DEFENDANT: I do understand that.

13 THE COURT: Do you wish to go forward with your plea  
14 at this time?

15 THE DEFENDANT: Yes, Your Honor.

16 MR. WHITAKER: Your Honor, if I might have just one  
17 moment of response.

18 I have absolutely no quarrel with Mr. Bakst and his  
19 client. Certainly Mr. Bakst did the best he could for his  
20 client and his client deserves to be repaid. I have nothing to  
21 comment with respect to him.

22 However, Mr. Drabek is an entirely different story.  
23 Mr. Drabek introduced Mr. Kisor to Keith Mohn, and that's  
24 reflected in the PSIR. Mr. Drabek received substantial amounts  
25 of money from the amounts that are referred to here with

1 respect to 3.6 million dollars. Our estimate is that he's  
2 received as much as \$750,000 and various kinds of gifts from  
3 Mr. Kisor along the way. He used Mr. Kisor's credit cards  
4 repeatedly for his own personal use. Throughout this,  
5 Mr. Kisor could have shifted or attempted to shift blame to  
6 Mr. Drabek. He didn't do that, Your Honor. Mr. Drabek was a  
7 participant in all of the fraudulent activity, or much of it,  
8 at least, that is the subject of this fraud indictment.

9 So with -- there are many, many victims in this case  
10 and we don't diminish their loss in any way, but I will tell  
11 the Court that Mr. Drabek is not among them.

12 THE COURT: Any other victims wish to speak?

13 Ma'am. Come forward, if you would.

14 MS. TURBA: Your Honor, Liz Turba. I'm an investor.

15 And I must preface this by saying that I knew Pat  
16 Kisor when he drove a Ford Pinto with the muffler hanging off,  
17 installing audio visual equipment in my home. We had many,  
18 many long discussions about family, about spirituality, about  
19 life. He sat at my dinner table. And now he's taken my  
20 children's inheritance. This was money from a divorce that I  
21 can never recover. As a single mother now, I was forced to  
22 sell my home in Amberly, move to a condominium, move my  
23 children because I could no longer afford. And I'm one of the  
24 least. I'm hearing when we sit around in court in Michigan to  
25 try to recover the losses with the receiver, I'm hearing

1 stories from people about they couldn't afford cancer  
2 treatment. And as a cancer nurse, I have nothing but feelings  
3 of helplessness in this case that I even knew Pat and I thought  
4 I knew him very well, but it turned out that I'm not sure that  
5 I can believe anything that came out of his mouth. And I  
6 really -- it took me a lot of courage to come up here today  
7 because of my position in the community, but I feel it's  
8 important for Pat to understand that this is not something that  
9 requires a year of probation. It's affected numerous lives,  
10 destroyed lives.

11 Thank you, Your Honor.

12 THE COURT: Thank you, ma'am.

13 Anyone else?

14 Counsel approach.

15 (Sidebar conference held off the record with counsel.)

16 THE COURT: For the record, the Court's discussed with  
17 counsel the other civil litigation that's pending, the  
18 potential for additional criminal actions, and so forth.

19 So, Mr. Kisor, is there anything you'd like to discuss  
20 with Mr. Whittaker about our conversation before we proceed?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. In the lion's share of the  
23 cases that I accept pleas of guilty in, I accept the plea at  
24 the time that it is entered. This is not your garden variety  
25 fraud, and that is why I held off accepting the plea until



1 after I reviewed the presentence report and had an opportunity  
2 to hear from the victims or some of the victims.

3 Mr. Kisor, you have clearly been attuned to all of the  
4 questions that I've asked of you, you have appeared to give  
5 straightforward responses, based upon what Mr. Hunt has  
6 explained you have been forthcoming for several years with  
7 information about your crimes.

8 My review of the presentence report, to the extent  
9 that it has been able to contact folks willing to talk, to the  
10 extent that Miss Jensen has been willing and able to contact  
11 folks willing to talk, discloses that you have a number of  
12 friends and folks you've met in the course of your dealings  
13 with your church who are big fans, but they also recognize that  
14 you have to pay a penalty for your actions.

15 I've observed you throughout these proceedings.  
16 You've responded directly to my questions. I'm satisfied that  
17 you are in full possession of your faculties; that you're not  
18 suffering from any apparent physical or mental illness as you  
19 stand here today. You don't appear to be under the influence  
20 of narcotics or alcohol. You seem to clearly understand the  
21 nature of these proceedings, the charges involved, the  
22 consequences of your plea of guilty. I suspect based upon  
23 representations that have been made that you're fully aware of  
24 all plea negotiations that have been undertaken in your behalf;  
25 correct?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Accordingly, I'm finding that you are  
3 fully competent and capable of entering into an informed plea;  
4 that your plea of guilty is a knowing and voluntary plea  
5 supported by an independent basis in fact containing each of  
6 the essential elements of the offense. Your plea is therefore  
7 accepted. You are now adjudged guilty of the three offenses to  
8 which you have entered pleas and now stand before the Court for  
9 sentencing.

10 For the record, the Court has reviewed the presentence  
11 report, the sentencing memorandum prepared by Mr. Richardson  
12 and Mr. Whitaker. I've reviewed letters from Bishop Michael  
13 Harward, Keith Jensen, brothers David Kisor and your father, I  
14 believe, as well, your wife, Denise Kisor, Gregory Hurst Kisor,  
15 Mike Lane, Randy McGladrie, Mike Nakata, Eugene Northrop, Janet  
16 Northrop, Kevin Rutter, Mr. Anthony Strike, Pamela Winter, Jim  
17 Zaya, one filed yesterday from a Leroy Moster. A letter --  
18 well, all of these have been favorable. A letter from the  
19 Pushmans which indicates that they are out of combined total of  
20 \$200,000, they are senior citizens who have lost a significant  
21 percentage, I believe, of their retirement fund. And I don't  
22 know at this point whether they've received any moneys back  
23 from Agave.

24 Miss Jensen, do you know?

25 PROBATION OFFICER JENSEN: Your Honor, I don't have

1 that information with me right now. I will verify if they've  
2 received any money.

3 THE COURT: I don't know if this letter has been  
4 filed. It is a May 7th letter. I'll give you -- yes, it is  
5 listed on your -- it's listed on your list. Good enough.

6 You know, you've admitted here today to the vice of  
7 gambling beginning in 1990. It's true that people lost money  
8 in a market downturn, but what -- that may explain some of  
9 this, but what is inconsistent with all of the letters that  
10 have been written in support is the behavior that led to  
11 two-and-a-half million dollars of gambling losses or the  
12 purchase of 1.75 million dollars in vehicle purchases, payments  
13 on a home in apparently the Virgin Islands, 3.625 million  
14 dollars of other personal expenditures. It's a whale of a lot  
15 of money. It's 8.092 million dollars of funds that the  
16 government claims are diverted for personal expenditures. I  
17 don't know how you ever will repay that. You've saddled your  
18 family. I don't think you've crippled your family, although  
19 you've crippled some families, in terms of their ability to go  
20 forward and to live comfortably. Clearly, some of these  
21 victims were investors that could afford -- could afford to run  
22 the risk of their investment, but I don't think any of them  
23 expected to be victims of theft. I think they could anticipate  
24 the risks in the marketplace, but I don't think they could  
25 anticipate the risk that you would steal from them. And,

1 obviously, that's what brings you here.

2 18 United States Code Section 3553(a) indicates that  
3 there are a number of factors that I shall consider in imposing  
4 sentence. It begins by stating that the Court shall impose a  
5 sentence that is sufficient, but not greater than necessary, to  
6 comply with the purposes that are set forth in paragraph (2).  
7 In addition, I have to consider the nature and circumstances of  
8 the offense, the history and characteristics of the defendant.

9 Everything I know about your history is that you and  
10 your wife come from essentially middle-class homes. You're the  
11 product of divorce, like a number of other people. It is  
12 unfortunate. It doesn't explain how you've become a thief.  
13 You appear to be very active in your church. You appear to  
14 have been very forthcoming with your money, willing to help  
15 virtually anyone. That is to be commended. Those are traits  
16 that I suppose will hopefully inure to the benefit of your  
17 family while you're away.

18 I have to consider the sentence that I impose reflects  
19 the seriousness of the offense, that it promotes respect for  
20 the law, that it provides just punishment for the offense,  
21 affords adequate deterrence to any future criminal conduct.  
22 I'm not concerned about that really. I don't believe you're  
23 going to be in a position in the future to wreak this kind of  
24 financial havoc again, but, nonetheless, it is a factor that I  
25 have considered.

1 (C) kind of goes hand in hand with (B) in terms of the  
2 need to protect the public from further crimes of the  
3 defendant. You're not a violent criminal, but your acts have  
4 done great violence in a number of homes.

5 The Sentencing Guidelines provide for probationary  
6 sentences and they provide for prison sentences and they  
7 provide for split sentences, and you don't qualify for a  
8 probationary sentence.

9 The guidelines are to be treated as advisory, but in  
10 more cases than not I have tried to adhere to those guidelines  
11 because I think they are instructive and they do help guide the  
12 Court in the exercise of its discretion in most instances.

13 Mrs. Kisor, I would say this to you: I apologize for  
14 what I have to do, but I don't apologize in the same vein. I  
15 feel badly for you and your family and what your children will  
16 have to endure as a result of your husband's crimes. At the  
17 same time, the victims have suffered significant loss, and that  
18 must be addressed.

19 Two-point-some-odd million dollars to the Bellagio for  
20 gambling losses, a Rolls-Royce, a Lamborghini, and two Vectors.

21 I suspect at this point, Mr. Kisor, you realize that  
22 when you lay in your grave, you can't take it with you.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And the pursuit of material gain will  
25 destroy, if you let it, and you've done a whale of a job.

1           The agreed-upon base offense level, I believe, was 30,  
2           and the Court so finds. However, appropriate Sentencing  
3           Guideline is 2B1.1(a).

4           I stand corrected. The base offense level is 6.  
5           Because of the specific offense characteristics, we add 20  
6           points. And because you defrauded approximately 140 investors,  
7           there's an additional increase of four levels because the  
8           offense involved more than 50 victims. So that gets us to 30.

9           There is an additional adjustment for your role in the  
10          offense of two points which really takes us to 32.

11          You're being given credit under the guidelines of an  
12          additional two points for acceptance of responsibility and an  
13          additional one point because you went to the authorities to  
14          notify them of your own misconduct. So that's how we get to  
15          29.

16          You don't have a criminal history, juvenile or  
17          otherwise, which means that you are a 29 offense level adjusted  
18          and a criminal history category of I.

19          To Amanda, Lehl a, Josef, Jameson, and Jackson, I  
20          apologize for having to sentence your father to prison, but he  
21          has richly deserved this by his actions, and I believe he's  
22          told you that.

23          As you know, Mr. Kisor, the sentencing range for a 29,  
24          category I is between 87 months and 108 months as to Count 1.  
25          It is 60 months for Count 2. It's one to three years as to

1 Count 3.

2 J. Patrick Kisor, I hereby commit you to the custody  
3 of the United States Bureau of Prisons for a term of 90 months  
4 in Counts 1 and 3 -- I misspoke previously -- Counts 1 and 3,  
5 and 60 months as to Count 2. All three of these sentences will  
6 be served concurrently to each other.

7 Following a sentence of imprisonment, you will be  
8 placed on supervised release. You will be placed on supervised  
9 release for the maximum period of time available under the  
10 statute which is three years for this -- these crimes.

11 Within 30 days of the commencement of your term of  
12 supervised release, the probation officer will recommend a  
13 payment schedule that will -- to me that will enable you to  
14 begin to pay the special assessment of a hundred dollars on  
15 each of the three counts that you've pled to, so \$300, and to  
16 pay the restitution figure.

17 As a condition of supervised release, you shall not  
18 commit any federal, state, or local crime. You're prohibited  
19 from possessing a firearm or other dangerous device. You shall  
20 not possess any illegal controlled substances. The mandatory  
21 drug testing condition is waived due to defendant's lack of  
22 prior substance abuse that I'm aware of. You are to otherwise  
23 comply with all the standard conditions of supervised release.  
24 And you are to make regular payments on the restitution figure  
25 that I will impose.

1           Unless I'm advised otherwise, I see no reason to  
2 collect your DNA.

3           PROBATION OFFICER JENSEN: Your Honor, because this is  
4 a felony conviction, the law says we have to.

5           THE COURT: I've been advised otherwise. Therefore,  
6 we're going to collect your DNA. Okay.

7           Thank you.

8           You're to continue to provide all requested financial  
9 information to Miss Jensen.

10          When you get out, you shall not engage in an  
11 occupation involving investments, at least not without prior  
12 permission of the Court, nor open any new lines of credit  
13 without permission of the probation officer.

14          It's my understanding you have surrendered all the  
15 assets you have. Is that correct?

16          THE DEFENDANT: Yes.

17          THE COURT: Now, you and your wife -- you started a  
18 couple of businesses; correct? Are those ongoing concerns?

19          THE DEFENDANT: Yes.

20          THE COURT: You started them or your wife started them  
21 or your family started them, what happened?

22          THE DEFENDANT: My -- my wife started them. I just  
23 assisted her in starting them with labor and work.

24          THE COURT: The recommended restitution figure at this  
25 point is six point nine zero one six seven four million dollars



1 and thirty-one cents. That number will increase.

2 Miss Jensen has requested an additional 90 days to  
3 contact additional individuals who may be victims in this case  
4 to assign their losses as restitution, and she will need to  
5 confirm that and so the Court will grant that additional 90  
6 days.

7 You shall participate in the inmate financial  
8 responsibility program during your incarceration, and to the  
9 extent that we can start a payment plan, albeit small, while  
10 you're in prison, you'll start paying a portion of your prison  
11 salary to reduce your obligation.

12 You have a right to appeal my sentence if you believe  
13 that it is illegal in any way, as does the government. You  
14 have ten days from today's date within which to do that.

15 Mr. Whitaker, I would ask that you are retained  
16 counsel, that you would protect your client's appellate rights  
17 in that regard.

18 MR. WHITAKER: I will, Your Honor.

19 THE COURT: Very well.

20 Anything further on behalf of the government?

21 MR. HUNT: Your Honor, there is one technical matter  
22 that Mr. Whitaker and I would like to discuss with you at the  
23 sidebar.

24 THE COURT: Yes.

25 SIDEBAR CONFERENCE

1 MR. HUNT: I didn't want to do this in open court, but  
2 I think when you announced that the restitution would begin as  
3 part of the supervised release, I think you should change that  
4 to make it due and payable in total immediately because I don't  
5 think you meant that.

6 THE COURT: Well, yeah. And I was conflicting there  
7 at the end too.

8 MR. HUNT: So I don't know how you want to clean that  
9 up, but usually the restitution orders are --

10 THE COURT: I'll --

11 MR. HUNT: -- are payable immediately.

12 THE COURT: I'll just clear that up.

13 SIDEBAR CONFERENCE CONCLUDED

14 THE COURT: Mr. Kisor, I want to clarify for the  
15 record that the restitution figure of at least 6.9 million  
16 dollars as I previously stated is due immediately. Therefore,  
17 the provisions we were talking about with inmate financial  
18 responsibility, your obligation to begin to pay starts today.  
19 All right.

20 I do believe that will be all.

21 MR. WHITAKER: Your Honor, just a couple of things, if  
22 we might.

23 First of all, could Mr. Kisor have a voluntary report?

24 THE COURT: Yes.

25 MR. WHITAKER: And, secondly, would the Court

1 recommend the Ashland facility as the facility because of its  
2 proximity to his home?

3 THE COURT: All I can do is recommend that, as you  
4 know.

5 MR. WHITAKER: I understand.

6 THE COURT: And, yes, I will do that.

7 MR. WHITAKER: Thank you, Your Honor.

8 THE COURT: Anything further, Mr. Hunt?

9 MR. HUNT: No, Your Honor. Thank you.

10 THE COURT: Mr. Whitaker?

11 MR. WHITAKER: Nothing further, Your Honor.

12 THE COURT: That will be all.

13 (Proceedings concluded at 11:37 a.m.)

14 - - -

15  
16 C E R T I F I C A T E

17 I, Julie A. Wolfer, the undersigned, do hereby  
18 certify that the foregoing is a correct transcript from the  
19 record of the proceedings in the above-entitled matter.

20 s/Julie A. Wolfer  
21 Julie A. Wolfer, RDR, CRR  
22 Official Reporter  
23  
24  
25